APPENDIX A.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 7926

SAMUEL G. JONES, SR., *Appellant*,

v.

UNITED STATES OF AMERICA, *Appellee*.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk.
Walter E. Hoffman, District Judge.

(Argued September 26, 1960. Decided October 10, 1960.)

Before SOBELOFF, Chief Judge, and SOPER and HAYNSWORTH, Circuit Judges.

Ellsworth T. Simpson for Appellant, and Plato Cacheris, Assistant United States Attorney, (Joseph S. Bambacus, United States Attorney, on brief) for Appellee.

Opinion

HAYNSWORTH, Circuit Judge:

The defendant was convicted on each of six counts in an indictment charging the evasion of income taxes due by the defendant, and by a corporation owned and controlled by him, through the filing of false and fraudulent returns.

The Government's case was founded principally upon the fact that corporate funds had been used to construct and maintain two residences and in connection with the operation of a farm when such expenditures in fact served the defendant's individual purposes and inured to his benefit, but served no corporate purpose. The corporation did not own either of the residences or the farm. There were other miscellaneous corporate disbursements, said to have been only for the personal benefit of the defendant. All of these corporate expenditures were expensed on the corporation's books and deducted in computing its income tax

obligations for the years 1952, 1953 and 1954. The defendant did not include these disbursements as income to him in his individual returns for those years.

The defendant urged, principally, on this appeal that he was denied a fair trial because a computation of corporate income tax deficiencies for the years in question included certain adjustments which the Government conceded were not fraudulent. The construction and operation of a third residence, which the Government conceded on the trial was used for corporate purposes, and the purchase of certain machinery and capital assets for the corporation had been expensed on the corporate books and deducted in computing corporate income tax liabilities. The deduction of such capital items the Government conceded was not fraudulent, but their capitalization resulted in adjustments which made a substantial contribution to the overall deficiencies shown in computations which were offered in evidence by the prosecution and received without objection.

The defendant complains that the effect of these computations was to suggest to the jury that all of the deficiencies of corporate income tax were attributable to corporate payment of the defendant's personal expenses and to inflate the apparent effect of the alleged fraudulent transactions.

The prosecution was required to offer computations along the line that it did offer in order to show that full and proper returns would have resulted in larger tax obligations than those shown in the returns actually filed. If that fact were not shown, the return, however fraudulent, would not have resulted in the evasion of any income tax liability. The jury was clearly and repeatedly told that there was no claim of fraud or of wrongdoing in connection with the corporation's expensing disbursements for capital assets, nor was fraud inferable from income tax adjustments resulting from their subsequent capitalization. If the defendant had wished at the time of the trial, he could

have introduced a computation which would have shown exactly what contribution to the overall deficiencies had been made by the transactions which the prosecution claimed to have been fraudulent and by those transactions as to which the prosecution made no such claim. When the defendant at the trial undertook to offer no such computation, and failed to request one of the prosecution, he is hardly in a position now, on appeal, to complain that the prosecution did not show with mathematical precision the tax consequence of what was generally and clearly explained to the jury. The corporate deduction of disbursements in payment of the defendant's personal expenses clearly did contribute to the corporate deficiencies. The Government's proof showed that these disbursements exceeded $10,000 in each of the years 1952 and 1953, and exceeded $108,000 in 1954. When the proof showed that the corporate deficiencies resulted from a combination of the disallowance of personal expense items and the capitalization of certain corporate expenditures for corporate capital assets, the fairness of the trial was not impaired by the absence of a mathematical computation showing the relative contribution of each type of adjustment, a computation which the defendant during the trial neither offered nor requested.

The defendant complains of admission in evidence of a "Bride's Book" to show the receipt of a wedding present, this being one of the small items of personal expense charged to have been made by the corporation for the benefit of the defendant. The record was received in evidence under the "Shop Book Rule."[1] Whether the "Bride's Book" qualified for admission in evidence under the rule, we need not consider, however, for the defendant admitted that he sent the present to the bride and paid for it with corporate funds. The receipt of this evidence as to this very small item in no way prejudiced the defendant or his defense.

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[1] 28 USCA 1732.

Next the defendant complains that the prosecution used notes made after an interview with a witness to refresh the witness's recollection. The notes were not offered in evidence and their use only for the purpose of refreshing the witness's recollection was unobjectionable.[2]

Next the defendant complains of the receipt of evidence that the defendant said in 1957 of one of the personal residences that he intended to use it as his own. His position is that his intention in 1957 had nothing to do with what his intention was when it was constructed with corporate funds in 1954. When the proof showed the residence never had been used for any corporate purpose, however, evidence of the defendant's declaration in 1957 that he intended it for personal use could be considered by the jury in determining what the intention was at the time the residence was constructed. It was clearly explained to the jury that the defendant's guilt or innocence depended upon what he had in contemplation when he acted in 1954.

The defendant also complains of two isolated comments by the trial judge made in this very lengthy trial, comments to which no objection was made at the time and which, we, upon examination, find unobjectionable and unprejudicial.

Finally, complaint is made of supposed deficiencies in the charge. Though no objection was made to the charge at the time as required by Rule 30 of the Federal Rules of Criminal Procedure, we have examined the entire charge and find that it fully and fairly submitted the case to the jury.

The defendant's counsel has searched the record painstakingly for a basis for a new trial. We have considered all of his contentions, but find no error affecting substantial rights of the defendant.

Affirmed.

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[2] United States v. Rappy, 2 Cir., 157 F. 2d 964.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

No. Cr. 11-763

UNITED STATES OF AMERICA

v.

SAMUEL G. JONES, SR.

[Filed June 8, 1959]

Judgment and Commitment

On this 8th day of June, 1959 come the attorney for the government and the defendant appeared in person and[1] by counsel.

IT IS ADJUDGED that the defendant has been convicted upon his plea of[2] Not Guilty and a verdict of Guilty of the offense of violation of Section 145(b), Internal Revenue Code; 26 U.S.C. Section 145(b); Section 7201, Internal Revenue Code of 1954; 26 U.S.C. 7201 (Income Tax Evasion) as charged[3] in the Indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

It is the judgment of the Court that the defendant, Samuel G. Jones, Sr., do pay the cost of this prosecution and, as to each of the six counts of said indictment, that he pay a fine of $5,000.00, making an aggregate fine in the sum of $30,000.00, and that he stand committed for non-payment of said fine. It is further the judgment of the Court that, in accordance with the provisions of Title 18, Section 4208 (b), U.S.C., the defendant, Samuel G. Jones, Sr., be and he is hereby committed to the custody of the Attorney Gen-

eral, which commitment shall be deemed to be for a period of five years on each of said counts of said indictment, but to run concurrently; said commitment being for the purposes of a study as described in Title 18, Section 4208(c), U.S.C., and which said commitment is subject to modification as provided by Title 18, Section 4208(b), U.S.C., after receipt of the report and recommendations from the Director of the Bureau of Prisons and the Board of Parole. The Attorney General and Director of the Bureau of Prisons are granted a maximum period of six months within which to make the study as provided by law, and to file the required report and recommendations.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshall or other qualified officer and that the copy serve as the commitment of the defendant.

Walter E. Hoffman
United States District Judge

The Court recommends commitment to:"

Walkley E. Johnson
Clerk